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MICROSOFT CORPORATION ONE MICROSOFT WAY REDMOND, WA 98052-6399			EXAMINER BERTRAM, ERIC D	
			ART UNIT 3766	PAPER NUMBER
			NOTIFICATION DATE 06/08/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

roks@microsoft.com  
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### Office Action Summary

**Application No.**

10/790,602

**Applicant(s)**

WILLIAMS ET AL.

**Examiner**

Eric D. Bertram

**Art Unit**

3766

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4-9, 12-17, 20-22, 28-33 and 44-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-9, 12-17, 20-22, 28-33 and 44-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/26/2009 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 5/26/2009 have been fully considered but they are not persuasive. The applicant argues that Lemelson does not disclose an environmental sensor that detects a change in ambient light and then triggers capture of an image in response to the detected change. The Examiner respectfully disagrees. Clearly, Lemelson discloses an environmental sensor that monitors ambient light (Col. 3, lines 5-10). Since the sensor is responsible for automatically setting the shutter timing functions of the camera based on the amount of ambient light detected, it inherently must detect changes in the ambient light, otherwise the camera would never adjust the shutter timing. Furthermore, without knowing how long the shutter must remain open for, the camera would never be triggered to capture an image. Clearly, only after the device has become stable, and only after the shutter timing has been determined based on ambient light, is the camera triggered to open its shutter and capture an image.

3. Regarding claims 7, 17 and 46, since the environmental sensor of Lemelson is configured to detect all changes in ambient light in order to adjust the shutter timing, this would inherently include any changes in ambient light due to movement of the environmental sensor from one room to another. Furthermore, it is important to note that the current claims, nor the applicant's specification, disclose actually detecting a change in rooms. All that is disclosed is that a change in ambient light "can indicate movement of the wearer from one room to another" (see page 6 of the specification).
4. Regarding the other dependent claims, the applicant merely relied on the arguments presented against Lemelson, which have been addressed above.
5. The rejections of claims 1, 4-9, 12-17, 20-22, 28-33 and 44-46 are still considered proper.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
8. Claims 8 and 9 recite that the detection of the capture condition comprises detection of a change in ambient sound or detection of a change in ambient temperature, respectively. However, claim 1 states that the environmental sensor is configured to monitor an ambient condition (singular) that includes ambient light. Therefore, there is no claimed structure that can detect a change in either ambient

sound or ambient temperature. Such an omission amounts to a gap between the necessary structural connections. See MPEP § 2172.01.

### ***Drawings***

9. The drawings submitted on 5/6/2005 are objected to because they are labeled to replace figures 1 and 2, but it is believed that they should have replaced original figures 2 and 6. As is currently stands, figures 2 and 6 are duplicates, albeit with differing quality. Furthermore, the drawings are no longer correctly described in the specification, and some of the reference numbers do not match up. It is recommended the applicant submit a new set of drawings to correct these problems. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the

applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

10. The disclosure is objected to because of the following informalities: The specification is objected to because the brief and detailed descriptions of figures 1 and 2 on pages 3-7 do not correspond with what is shown in figures 1 and 2 submitted on 5/6/2005. The applicant must either correct the specification, or submit new drawings, as described above.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 7, 12, 15, 17, 28, 30-32, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemelson (US 4,901,096). Lemelson discloses a portable recall device 10 configured to be carried by a user (read as a wearer), which includes a camera 10A (see figure 1 and Col. 1, lines 8-12). Lemelson further discloses an accelerometer 16 operably connected to the camera that will only allow capture of an image if a stable condition is detected (Col. 3, lines 12-29). Lemelson further discloses an environmental sensor that senses ambient light external to the user, and will only allow capture of an image if the sensed ambient light is within predetermined

parameters (Col. 3, lines 5-11). Since the sensor is responsible for automatically setting the shutter timing functions of the camera based on the amount of ambient light detected, it inherently must detect changes in the ambient light, otherwise the camera would never adjust the shutter timing. Furthermore, without knowing how long the shutter must remain open for, the camera would never be triggered to capture an image. Clearly, only after the device has become stable, and only after the shutter timing has been determined based on ambient light, is the camera triggered to open its shutter and capture an image. Therefore, once the switch 13 is depressed, detection of the proper amount of ambient light and detection of a stable condition of the camera will cause the capture of an image by the camera (Col. 2, line 59-Col. 3, line 11).

13. Regarding claims 7, 17 and 46, since the environmental sensor of Lemelson is configured to detect all changes in ambient light in order to adjust the shutter timing, this would inherently include any changes in ambient light due to movement of the environmental sensor from one room to another. Furthermore, it is important to note that the current claims, nor the applicant's specification, disclose actually detecting a change in rooms. All that is disclosed is that a change in ambient light "can indicate movement of the wearer from one room to another" (see page 6 of the specification).

14. Regarding claims 15, 30 and 32, the capture of the image will be delayed until the stable condition is detected.

15. Regarding claim 32, the microprocessor or computer 11 must inherently be encoded with a computer program from a computer program product in order to carry out the steps described above.

16. Regarding claim 31, a user of a camera will inherently review the images taken by the camera at a later point in time.

***Claim Rejections - 35 USC § 103***

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

19. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).



20. Claims 4, 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Ishibashi (US 6,558,050). Ishibashi discloses a portable recall device 1 that is configured to be carried by a wearer as shown in figure 1. The device includes a camera, as well as a three dimensional head orientation detecting unit 4 (Col. 2, lines 30-56), and a "microphone 22 that takes in sounds around the wearer and voices of the wearer, too...Using this data, the controller 5 checks whether the wearer is speaking or not" (Col. 2, lines 57-60). If in step #10 a capture condition is detected in that the wearer is found not to be speaking by monitoring ambient conditions (Col. 4, lines 21-40), and if this capture condition is followed by the detection of a stable head orientation by the head orientation detecting unit at step #50, then a shooting instruction is outputted to the video camera circuit (Col. 4, lines 48-49). Therefore, Ishibashi discloses that the use of ambient sounds as a capture condition for a camera is old and well known in the art, and the incorporation of this feature in the analogous art of Lemelson would have been obvious to one of ordinary skill in the art at the time of the applicant's invention.

21. Regarding claims 4 and 20, Ishibashi discloses the audio data may be recorded in recording unit 12 (Col. 3, lines 15-18)

22. Claims 5, 6, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Horimoto (US 4,009,943). Lemelson, as described above, discloses the applicant's basic invention with the exception of using a wide-angle, fish-eye lens. However, the use and advantages of a wide-angle, fish-eye lens is notoriously old and well known in the art, as taught by Horimoto (Col. 1, lines 11-

13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Lemelson by including a wide-angle, fish-eye lens in order to capture the true perspective of what the actual object would appear to an observer (Col. 1, lines 13-18).

23. Claims 13, 14 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Grosvenor et al. (US 2003/0025798, hereinafter Grosvenor). Lemelson, as described above, discloses the applicant's basic invention, including the use of an accelerometer to detect motion of a user and a camera held by the user. However, Lemelson is silent as to using a plurality of accelerometers or a gyroscope to detect the motion. While the use of gyroscopes and/or accelerometers are notoriously old and well known in the art for detecting rotational/angular movement of an object, attention is directed to the secondary reference of Grosvenor, which discloses the use of one or more gyroscopes or accelerometers to measure movement of a camera that is attached to a user (par. 0068). Specifically, Grosvenor discloses the use of a plurality of accelerometers for detecting rotation along three axes (par. 0069). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the device of Lemelson by using at least one gyroscope or a plurality of accelerometers to detect angular/rotational movement since Grosvenor demonstrates that they would be fully capable of detecting the motion of the user and the camera held by the user, which would help guarantee a stable condition, as required by Lemelson.

24. Claims 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Moultrie, Jr. (US 2002/0159770, hereinafter Moultrie). Lemelson,

as described above, discloses the applicant's basic invention with the exception of the capture condition comprising detecting a change in the signal from a passive infrared detector triggered by heat from a person in the proximity of the camera. Attention is directed to the secondary reference of Moultrie, which discloses a camera that is activated by detecting a change in the signal from a passive infrared detector triggered by heat from an animal in the proximity of the camera (see abstract). Therefore, it would have been obvious to one of ordinary skill in the art to modify the camera of Lemelson by adding capture condition detection with an infrared sensor as taught by Moultrie in order to make the system automatic and allow the user to take images of interest without having to be with the camera.

25. Claims 33 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lemelson in view of Shiozaki et al. (US 5,978,603, hereinafter Shiozaki).

Lemelson, as described above, discloses the applicant's basic invention with the exception of the device being capable of playing digital media. However, attention is directed to the secondary reference of Shiozaki, which discloses a digital camera 1 that is capable of displaying digital media on a LCD display 4 (see figure 2). Therefore, it would have been obvious to replace the film camera of Lemelson with the art-recognized equivalent digital camera of Shiozaki in order to allow a user to preview images on the display and delete unwanted images without wasting film.

26. Regarding claim 46, Lemelson, as described above, discloses an ambient light level sensor.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is (571)272-3446. The examiner can normally be reached on Monday-Thursday from 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric D. Bertram/  
Examiner, Art Unit 3766